



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on **April 9, 2003**

NOTICE OF ACTION TAKEN -- DOCKET OST-2003-14542- 6

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of **ALASKA AIRLINES, INC.(ALASKA)**, filed **2/19/03**, for:

XX Exemption for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between the terminal point Los Angeles, California, and the terminal point Guadalajara, Mexico. Alaska states that it will use the authority to provide daily nonstop service in the market on a year-round basis, beginning July 10, 2003.¹

Applicant rep: **Marshall S. Sinick (202) 626-6651** DOT Analyst: **Linda L. Lundell (202) 366-2336**

DISPOSITION

XX **Granted (subject to conditions, see below)**

The authority granted was effective when taken: **April 9, 2003**, through **April 9, 2005**.

Action taken by: **Paul L. Gretch**
Office of International Aviation

XX **The authority granted is consistent with the aviation agreement between the United States and Mexico.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX** **Holder's certificate of public convenience and necessity**
XX **Standard Exemption Conditions (attached)**

Bilateral Opportunities/Licensing Issues: Under the U.S.-Mexico aviation agreement, up to two U.S. carriers may be designated to provide direct carrier (own aircraft) service in a given city-pair market. Currently, Delta Air Lines, Inc., is the only U.S. carrier authorized to provide direct carrier service in the Los Angeles-Guadalajara market.² American Airlines, Inc. (American), previously held authority as the

¹ In its original application, Alaska proposed that it would start service in the market on June 8, 2003. On March 20, 2003, Alaska advised that, in refining its service proposal and after making inquiries in Mexico regarding groundhandling and other services at Guadalajara, Alaska now proposes to commence nonstop year-round service in the Los Angeles-Guadalajara market on July 10, 2003.

² United Air Lines, Inc., holds authority to provide code-share service in the market.

second U.S. carrier to provide direct carrier service in the Los Angeles-Guadalajara market, but its authority became dormant when it stopped serving the market in January 2003.³

Competing Requests/Responsive Pleadings:⁴ On February 4, 2003, American filed an application in Docket OST-2003-14447, requesting exemption authority to serve the Los Angeles-Guadalajara market on a seasonal basis during the period July 2, 2003, through August 31, 2003. On February 19, 2003, Alaska filed a competing application, in Docket OST-2003-14542, proposing nonstop year-round service in the Los Angeles-Guadalajara market.

American filed responsive pleadings to Alaska's competing request, stating that it recognizes that the Department will favor Alaska's application for year-round service over American's application for seasonal service in the market and, therefore, that it will not oppose Alaska's request. American does request, however, that the Department grant American's application in Docket OST-2003-14447 on a back-up basis in the event that Alaska fails to meet its startup date in the Los Angeles-Guadalajara market, or fails to maintain such service on a year-round basis.

In response, Alaska states that it does not oppose grant of the backup authority to American, but that American's request to make the backup authority effective immediately even if Alaska delays inauguration of its service by one day is unprecedented and contrary to the public interest, and should be rejected. In this regard, Alaska states that American has offered no explanation why the grant of Alaska's exemption application should be restricted in a way that no other U.S. carrier U.S.-Mexico exemption or certificate authority is restricted or conditioned and that Alaska should not, if circumstances prove necessary, be prohibited from availing itself of the 90-day dormancy provision under which every U.S. carrier has operated to Mexico for nearly fifteen years.

Decision: We have decided to grant Alaska's application here. The application is unopposed. We believe that Alaska's offer of year-round service holds the promise of significant service benefits for the market. While we will not award American the backup authority it requested, we will take certain steps designed to enhance the likelihood that Alaska's new service will indeed be introduced during the first half of July. Specifically, we will require Alaska to institute service in the Los Angeles-Guadalajara market no later than its proposed startup date of July 10, 2003. We will also require Alaska to file a notice with the Department no later than May 1, 2003, confirming that it will commence service on or before that date.⁵ We will also require Alaska to file a notice with the Department no later than June 1, 2003, providing evidence of any public announcements of the inauguration of such service and placement of its schedules for such service in its computer reservation system.⁶ We disagree with Alaska that such action is unprecedented. Where we have had competitive interest in a route, we have imposed startup conditions requiring a service to begin on a date certain.⁷ It is not our policy to allow valuable operating rights to go unused, particularly when another carrier is interested in serving the

³ Alaska held code-share authority to place its code on American's flights, but its authority also became dormant when American stopped serving the route in January.

⁴ We grant the motions of American and Alaska for leave to file otherwise unauthorized documents in Dockets OST-2003-14542 and OST-2003-14447.

⁵ Should Alaska decide not to serve the Los Angeles-Guadalajara market, it is required to file such notice as soon as that decision is made, but in no case later than May 1, 2003.

⁶ The May 1 and June 1 notices should be filed in the form of a letter addressed to the Director, Office of International Aviation, X-40, 400 Seventh Street, S.W., Washington, D.C., 20590. The letters should also be served in Docket OST-2003-14542 and on all parties to this proceeding.

⁷ See, e.g., Orders 98-1-22 and 92-5-41.

market⁸ In the event that Alaska advises us that it will not provide the proposed service by July 10, 2003, we will consider the appropriate next steps based on its position and any responses thereto. In addition to the startup date requirement, and with respect to discontinuation of service once inaugurated, the U.S.-Mexico exemption authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the application was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp

⁸ We will handle American's application, filed in Docket OST-2003-14447, in a future Departmental notice.

U.S. CARRIER
Standard Exemption Conditions

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations and with all applicable U.S. Government requirements concerning security;⁹ and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

10/2002

⁹ To assure compliance with all applicable U.S. Government requirements concerning security, the holder should, before commencing any new service (including charter flights) to or from a foreign airport, inform its Principal Security Inspector of its plans.